

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEN WALTERS, et al.,

Plaintiffs,

v.

GOLDEN GATE CRANE & RIGGING, INC.,

Defendant.

No. C-06-01906 WHA (DMR)

Consolidated with

No. C-06-05396 WHA (DMR)

**ORDER RE PLAINTIFFS' REQUEST
FOR RECONSIDERATION OF
JANUARY 3, 2012 ORDER**

KEN WALTERS, et al.,

Plaintiffs,

v.

GOLDEN GATE CRANE & RIGGING, INC.,
ROBERT NEWBERRY, SUE NEWBERRY,
et al.

Defendants.

The court is in receipt of Plaintiffs' January 4, 2012 letter requesting reconsideration by the court of its January 3, 2012 Order directing Plaintiffs to personally serve the court's December 7, 2011 Order setting a debtor's examination of Robert Newberry, as an officer of Judgment Debtor Golden Gate Crane & Rigging and in his personal capacity, on Defendants. [Docket Nos. 149 (Case No. 06-1906); Docket No. 111 (Case No. 06-5396) ("Jan. 4, 2012 Letter").]

1 Plaintiffs submitted an email that appears to indicate an agreement that Defendants would
2 accept service of all further documents by mail. (Exh. A to Jan. 4, 2012 Letter.) However, Plaintiffs
3 have previously represented to the court that Defendants are no longer represented by counsel.
4 [Docket No. 138 (Case No. 06-1906).]

5 In order to enforce a money judgment by writ of execution, the procedure on execution
6 “must accord with the procedure of the state where the court is located.” Fed. R. Civ. P. 69(a)(1).
7 In California, an order for the examination of a judgment debtor must be “*personally serve[d]* . . . on
8 the judgment debtor not less than 10 days before the date set for the examination. Service shall be
9 made in the manner specified in [California Code of Civil Procedure] Section 415.10 . . .” Cal.
10 Code Civ. Proc. § 708.110(d) (emphasis added).

11 In this case, it is unclear whether a prior agreement of the parties to accept service by mail
12 changes the requirements of California Code of Civil Procedure section 708.110(d). Further, given
13 that Defendants are no longer represented by counsel and Robert Newberry is proceeding *pro se*, the
14 most prudent course to effectuate proper enforcement of the writ of execution is to require strict
15 compliance with the personal service requirement of section 708.110(d). Accordingly, the court
16 VACATES the currently scheduled date of January 18, 2012 for the debtor’s examination. By no
17 later than **January 13, 2012**, Plaintiffs shall submit a proposed scheduling order for a judgment
18 debtor examination to take place on a new date of their choosing that is in accordance with the
19 court’s scheduling of such examinations and that will permit personal service of the Order setting
20 the debtor’s examination to be effected on Defendants.

21
22 IT IS SO ORDERED.

23
24 Dated: January 6, 2012

25 
26 _____
27 DONNA M. RYU
28 United States Magistrate Judge